

June 14, 2019

Mr. Mark Ells
Town Manager
Town of Barnstable
367 Main Street
Hyannis MA 02601

Dear Mr. Ells:

The home next door to us has been converted to commercial use. A corporation is using the home as a pay-per-night de facto hotel.¹ It is home to no one, ever. It has been rented for as short as one night. It has been used for events, such as a staff retreat, and by groups of adults, some of whom arrive in large commercial transport vehicles for their weekend events.² We purchased a home in zoning district RC, where zoning regulations permit homes to be used as single-family residential dwellings, do not allow homeowners to rent out even one room, and do not permit group homes or event venues.

This letter requests zoning enforcement and a decision within fourteen days. We provide our **March 15, 2019** request for the same for reference. We also ask your guidance as to how residents may obtain occupancy limit enforcement given that your staff has refused to enforce occupancy regulations. We provide the following for your background.

I first visited your offices on **February 19, 2019** to ask for health, building and zoning enforcement at 438 Main Street in Osterville. The first thing your enforcement staff said was “we don’t pay much attention to Osterville because of the kind of people who rent there.”

I wondered what makes me one of the “kind of people” who doesn’t need protection of the health code or zoning regulations. I still don’t know. I’m the kind who pays taxes. I’m the kind who read zoning regulations before we bought our home. I’m the kind who understands septic systems and occupancy limits. I’m the kind that worries about our land, property value, and community impact when an abutting property owner disregards those limits. I’m the kind who felt the need to ask the Barnstable police for increased presence due to what I’ve seen on multiple occasions by the unsupervised transient guests at the de facto hotel next door. That was a lifetime first. It made me understand why facilities that Barnstable permits to have transient overnight guests - hotels, motels, and Bed and Breakfasts - must have management

¹ To be clear, the corporation’s use of the property next door in zone RC in commerce as a de facto hotel that is home to no one is factually distinct from the circumstances of a family who rents their home to other families for certain periods of time when they are not on Cape Cod. Our request for enforcement does not raise questions associated with such use.

² As we have offered to your staff, we are able to provide images of prior “guest” reviews that evidence group, multi-family and staff retreat use.

present. I still wonder what “kind of people” in other Barnstable villages get treated differently by your staff, and why.

On **February 15, 2019**, your staff said it would enter our health and building enforcement request into the Town’s complaint system. I asked if there was any other action we needed to take with either the Health or Building Departments to that end. Your staff said no.

On the same day, and on several more days over the next month, I sent the Town - both the employee who said she would enter our complaint on February 15, 2019 and others - relevant information by email. I received replies.

I called the Health Department main line **a week or so after my February 15, 2019** visit to be sure the Town had processed our complaint. After hearing the address, the staff who answered the phone told me a certified letter was ready to go to the property owner and offered to explain to me the process that would follow.

As suggested by your enforcement staff, on **February 25, 2019** I asked a staff member in the Planning Department via email for a 15-minute meeting to find out what new zoning law all other staff had told us we needed to wait for. I received a response on **March 5, 2019** agreeing to talk, but when I then left a voice message asking when I could come in, I never heard back.

On **March 25, 2019**, I asked the Health Department for a status report because there were signs of continuing use and occupancy violations. Your staff replied that it had no record of our enforcement request. The Health Department said it would enter our complaint that day.

On **April 17, 2019**, I asked for a short meeting with the town attorney because I continued to see the same activity and occupancy.

I learned at that meeting on **April 22, 2019** that the Town had still not even walked through the property to determine the permitted occupancy.

A Health Department inspection happened on **April 23, 2019**.

The Town’s first statement to me more than two months earlier - that Town Hall staff doesn’t pay much attention to Osterville - turned out to be true.

On **April 29, 2019**, I asked your staff about the consequence on a corporation for operating a de facto hotel for months with the Town’s knowledge and without complying with a series of local laws. The **May 6, 2019** answer was, effectively, nothing. (see email)

On **May 13, 2019**, I again asked for occupancy limit enforcement after watching what we believed to be continuing violations that puts the septic system - and consequently our land - at risk. The Town’s **May 28, 2019** response was that the Town identified the permitted number of occupants at the April 23, 2019 inspection. That’s it. (see email)

My sister called the Health Department main line on Monday **May 6, 2019**. She said her son's fraternity was thinking of renting the property next door. She said she was calling the Town to ask about occupancy limits since "Bob's" offer of rent for the three-bedroom home invited eight occupants and also said it "comfortably sleeps ten". My sister said she wanted to be sure her son and the fraternity complied with local laws. The Health Department told her that the Town does not restrict occupancy. Your staff said the fraternity brothers could use "pullouts, couches or whatever" and offered that my sister should "feel good" about compliance, insurance and the issues she inquired about because the property was corporate-owned.

The consistent words and actions in response to our repeated requests have made very clear - indeed explicit - that your staff does not view enforcing occupancy limits to be their job and wishes to quiet residents on zoning. Neighbors of other investor owned de facto hotels have told me that their calls to Town Hall staff for enforcement have either gone unreturned or that they get the mantra - "keep an eye out for new laws" - as if there are no current health and zoning laws.

The unrelenting and universal avoidance we have experienced - from telling residents to go wait for new laws to telling callers that the Town does not restrict occupancy and everything in between - may effectively manage the record of complaints about de facto hotels in residential neighborhoods but it does not make issues that impact residents' homes and daily lives go away.

We ask you to answer the following questions:

- When we observe occupancy code violations (investors' offers of rent welcoming high occupancy levels bring high occupancy levels) from whom do residents seek enforcement? Since Town staff has indicated their job is to identify occupancy levels at inspection and take no further enforcement actions, are residents to take occupancy complaints to you? Directly to the Board of Health? To state environmental regulators? The police?
- May residents seek enforcement of rental offers that invite occupancy violations or must we wait to continually report the repeated occupancy violations that such offers invite? How about when the investor advertises common space as a bedroom?
- Given the universal and immediate direction from approximately a half a dozen of your staff that we should "wait for the new short-term rental regulations," (the same message has been offered to all other residents of whom we are aware who have called Town Hall about de facto hotels in residential neighborhoods), would you please share with us what they know about what those the new rules will allow, and how they will change zoning? What are residents being told we have to wait for?
- Does Barnstable intend to revamp zoning to make short-term rentals legal in all residential zoning districts?

Zoning Enforcement

On **February 15, 2019**, I also asked your staff for zoning enforcement. Two staff members immediately and separately said - without the benefit of facts - there was nothing anyone can do. They both, separately, told me to wait for new zoning regulations that the Town intended to adopt.

I called the Building Inspector on **February 28, 2019**. He said the zoning regulations “predate the internet” and that they were “from the 40s”. He too told me to wait for new regulations on short-term rentals that the Town intended to adopt. When I talked about current regulations, he asked if I was a lawyer and then whether I was a zoning lawyer. Residents don’t need to be lawyers to know that town employees may not select laws to enforce and laws to ignore based on their personal views about those laws or their date of adoption.

We sent a request to the Town for zoning enforcement on **March 15, 2019** (attached). There is a fourteen-day answer period, which timeframe we understand is directive and not necessarily compulsory. On **March 29, 2019**, the Town said it intended to issue a decision (attached). As of **June 14, 2019**, the Town has issued nothing.

This letter requests zoning enforcement. We ask the Town to issue a decision within fourteen days of this request. Our prior request is attached for reference. Given that the Town told us that it began investigating our initial request in March 2019, a decision within fourteen days of this **June 14, 2019** request is reasonable. If the Town believes an option available to it is to pretend it didn’t receive our request for zoning enforcement - after expressing its intent to act on it - please provide us with the basis for that position in writing.

Thank you for answering our questions and for providing a zoning decision within the fourteen-day timeframe.

Sincerely,

/Heather Hunt/

Heather Hunt

/David Bogan/

David Bogan

cc: Ruth Weil